

## **LEGAL STATEMENT RE: GOVERNOR'S PROCLAMATION 20-28.4**

The Governor's latest proclamation regarding the Open Public Meetings Act fully revokes the portions of the Governor's prior proclamation, issued on March 24, 2020, that we previously identified as having clearly exceeded his authority under the law that gives him certain emergency powers.

As we pointed out previously, the Governor's emergency powers very clearly do not give him the authority to prevent agencies, such as the Seattle City Council, from discussing, addressing, and legislating at meetings regarding whatever subjects it deems important. They allow him to prohibit a specific range of conduct, such as public gatherings, but do *not* give him the power to interfere with the ability of cities or counties to legislate or the power of city or county councils and commissions to choose which types of legislation to enact. **The Governor's latest proclamation fully withdraws his prior edict in that regard.**

**The Governor's latest proclamation also fully revokes and withdraws the incredibly convoluted and improper approach he previously took regarding enforcement of the Open Public Meetings Act.**

There is no dispute that the COVID-19 pandemic makes it challenging, and potentially unacceptable, to have in-person attendance at city council meetings. However, instead of taking the logical step of using his authority to **waive** the effectiveness of those portions of the OPMA that might conceivably, albeit not very plausibly, be interpreted as *requiring* that in-person attendance through a speakerphone in a public place be permitted (an act which he clearly had the legal authority to take), the Governor's prior order left those provisions in effect. Instead, relying on a March 6, 2020, Opinion from the Office of the Attorney General solicited specifically for the purpose of justifying his *ultra vires* action, and stepping entirely outside of his legal authority, the Governor first ruled that the OPMA **does** require that a speakerphone be set up in a public place, in order for any meeting to be compliant with that law, then went on, inconsistently, to carve out a limited exception for certain types of agency meetings, on certain topics, that the Governor decided to permit to occur virtually, while forbidding any meetings that did not address those specific topics of his choosing.

The new proclamation, thankfully, walks this back entirely. Instead, the Governor does precisely what we proposed on May 15, 2020, as an alternative, which was to have the Governor use his emergency powers to clarify that, for the duration of the pandemic, all-virtual meetings are a perfectly acceptable way for public agencies to meet and legislate.

The Governor's new proclamation makes clear, as we said on May 15, that the Governor's March 24 proclamation, Proclamation 20-28, was an ill-thought out and unlawful effort by him to micromanage the exercise by cities and counties of the powers vested in them by the Washington State Constitution. This improper action had the effect of preventing cities and

**LEGAL STATEMENT RE: GOVERNOR'S PROCLAMATION 20-28.4**

May 31, 2020

Page 2 of 2

counties throughout the state from fulfilling their constitutionally mandated obligations to the people they represent for fully 9 weeks, an enormous amount of time in the context of the challenges posed by the pandemic.

It is regrettable, as well as troubling, that those entities, such as the Seattle City Council as a whole and the Seattle City Attorney's Office in particular, to say nothing of the Office of the Attorney General, who could and should have stood up for the constitutional prerogatives and obligations of city and county councils in the face of overweening executive authority, instead remained entirely silent on the matter, and suggested (through their inaction, if not expressly) that they believed the preposterous proposition that the Governor's statutory power to take actions necessary "to help preserve and maintain life, health, property or the public peace" somehow gave him the power to tell the Seattle City Council what matters it could and could not deliberate upon.

/s/ Dmitri Iglitzin

Dmitri Iglitzin  
Barnard Iglitzin & Lavitt LLP